

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1068 of 1999****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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KESHAV PUNJA PATIL - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

THROUGH JAIL for Appellant(s) : 1,
MR BM MANGUKIYA for Appellant(s) : 1,
MR KP RAWAL, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE**and****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA****Date : 15/02/2007**

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be convicted by Sessions Court, Surat for the offence of murder of one Ganesh Sonwane, allegedly committed by him on July 20, 1997 at about 0445 hours in Zenith Mill, Surat by pouring boiling hot water over the deceased causing him burns. The Sessions Court, while rendering judgment in Sessions Case No.110 of 1998 dated 27th November, 1998, sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default, to undergo S.I. for 30 days. Aggrieved by the said judgment and order, the original accused has preferred this appeal.

2. The facts of the case, in brief, are that the appellant and Ganesh Vanabha Sonwane were working in Zenith Mill. They had some quarrel in the early morning hours of 20th July, 1997, while they were working together. They were separated by co-workers and thereafter, Ganesh was sleeping by the boiler. Around 4.45 a.m., it is alleged that the accused - appellant poured steaming hot boiling water over the deceased, as a result of which he suffered 30-40 degree superficial burns. He was taken to E.S.I. hospital where he was appropriately treated. While he was under treatment at the E.S.I. hospital, he expired on 3rd August, 1997. During this period, the police was informed and police recorded an F.I.R. from the deceased himself. Offence was registered

and investigated and ultimately, chargesheet was filed in the Court of J.M.F.C., Surat. J.M.F.C., Surat, in turn, committed the case to the Court of Sessions as the offence was triable exclusively by the Court of Sessions and Sessions Case No.110 of 1998 came to be registered.

2.1 Charge was framed against the accused - appellant at Exh.3 for the offences punishable under Section 323, 326 and 302 of I.P.C. to which the accused - appellant pleaded not guilty and he claimed to be tried. Considering the evidence led by the prosecution, the Trial Court came to the conclusion that offence of murder was proved against the appellant and recorded his conviction therefor. The Trial Court also concluded that offence punishable under Section 323 and 504 was not duly proved and, therefore, recorded an acquittal.

3. We have heard learned advocate Mr. Mangukiya for the appellant so also learned APP Mr. Rawal. We have been taken through the record and proceedings by both the sides in support of their respective submissions.

4. Learned advocate Mr. Mangukiya submitted that the evidence led by the prosecution indicates that the appellant poured hot water on person of the deceased with the help of a jug. The injuries suffered by the deceased were only superficial covering 35-40% of the body. Mr. Mangukiya submitted

that the medical evidence does not indicate that the injuries were sufficient in ordinary course of nature to cause death. It has also come in medical evidence that the injuries could not have ordinarily caused death but for subsequent complications. Mr. Mangukiya submitted that the deceased died of Septicaemia on the 14th day after the incident and, therefore, the Trial Court committed an error in convicting the appellant for the offence of murder. Mr. Mangukiya submitted that the evidence led by the prosecution, taken at best, would only suggest that the appellant poured hot water on person of the deceased and the deceased suffered 35-40% superficial burns but later on died because of Septicaemia. Pouring of hot water can never be considered as an act committed with an intention to cause death of a person nor can it be considered as an act so dangerous that it would ordinarily cause death of a person. Mr. Mangukiya, therefore, submitted that the Trial Court has erroneously recorded conviction for the offence of murder. At the most, Section 323 or Section 324 of I.P.C. would be attracted. Mr. Mangukiya does not seriously challenge the finding on involvement of the appellant in the incident.

5. Learned APP has opposed this appeal. According to him, the conviction is well-founded and may be confirmed.

6. We have examined the record and proceedings in light of rival side contentions.

7. Dr. Mohanlal Pannalal Oza (Exh.49) was the first doctor to treat the deceased. He says that the patient was brought to him alongwith his co-worker and father. He was informed that the deceased had sustained burns through hot water. The burns were on face, throat, chest, both the hands, abdomen and back of his body. The burns were approximately 35-40% and were superficial in nature. The patient was fully conscious. He was appropriately treated and was shifted to Mahavir Hospital on 21st July, 1997. He opined that the burns were not sufficient to cause death of the deceased but death may occur as a result of future complications like infection, kidney failure etc.

7.1 After the death of the deceased, his dead body was examined and post-mortem was performed by Dr. Krishnadutt Harishanker Chavli. After describing the injuries, he has stated that Ganesh died of Septicaemia and Septicaemia was caused because of burns suffered by him through hot water.

7.2 Despite close scrutiny of the medical evidence, we are unable to find any medical opinion to the effect that the injuries were the cause for death or that the injuries were sufficient in ordinary course of nature to cause death. The deceased died of Septicaemia.

7.3 Dr. Sanjaydas Surjitranjandas, examined at

Exh.12, is Medical Officer in Maskati Hospital, Surat. He says that the deceased was brought on 21st July, 1997 at about 10.00 p.m. He says that the patient, while treatment, expired on 3rd August, 1997 at about 0030 hours.

8. The evidence of p.w.1 - Kiritbhai Jayantibhai Patel (Exh.6), p.w.4 - Ashokbhai Chandubhai Pael (Exh.15), p.w.5 - Suleman Usmaan Mansuri (Exh.16), p.w.8 - Dakshesbhai Navneetbhai Parekh (Exh.22) and p.w.9 - Chhotelal Mithalal (Exh.23) go to show that these witnesses have not supported the prosecution case. Some of them are eye-witnesses and some panch witnesses.

9. However, the evidence of p.w.10 - Pareshbhai Gajanand Patel (Exh.29), p.w.11 - Subhashbhai Popatbhai Suryavanshi (Exh.30) and Vanabhai Haribhai Sonwane (Exh.31) clearly indicate that the deceased made an oral dying declaration before them that the appellant poured hot water/acid over the deceased at the relevant time. The F.S.L. Report rules out that the liquid substance poured on the deceased was Acid. The fact remains that oral dying declarations were made before these witnesses by the deceased implicating the present appellant.

9.1 So far as the quantity of liquid substance poured on the deceased by the appellant is concerned, the prosecution case is revealed through evidence of p.w.1 - Kiritbhai Jayantibhai Patel (Exh.6). He has

not supported the prosecution case but in the cross-examination to learned APP, he admits that he was present and Suleman Usmaan had said that the accused had poured steaming hot water from boiler on person of the deceased with a jug. This would show that the quantity of water poured on person of the deceased was not very large. The medical evidence also indicates that the deceased did not suffer any big burns. The burns were on 35-40% of the body which were superficial in nature.

10. The picture that emerges from the above pieces of evidence is that there was a quarrel between the deceased and the appellant not immediately before the incident but in proximity of time, that the appellant poured hot water over person of the deceased because of which the deceased suffered 35-40% superficial burns. After his receiving burns, when he was taken to the hospital, he was fully conscious. The deceased was admitted in the hospital and came to be treated till 3rd August, 1997 during which time, he developed Septicaemia and died because of that.

11. In our opinion, it is not possible to conclude that a man pouring hot water with the help of a jug on another person would have an intention of causing death of that person or even to infer a knowledge that the act was so imminently dangerous that it was likely to cause death of the deceased. Even knowledge cannot be attributed in this regard.

Under the circumstances, looking to the injuries suffered by the deceased, the injuries would fall within the definition of simple hurt and not even grievous hurt leave aside, murder.

12. When we conclude that the appellant can be said to have caused hurt to the deceased, the question that arises would be under which provision he may be convicted and punished. Section 324 reads as under:

"324. Voluntarily causing hurt by dangerous weapons or means. - Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

12.1 A plain reading of the said provision would indicate that a person can be punished under this Section if it is found that he has caused hurt in the manner indicated therein or with the help of instrument or substance indicated therein. It provides that if the hurt is caused by means of any heated substance, he can be punished with imprisonment of either description which may extend to three years, or with fine or with both. In our opinion, water can also be considered as a substance and in the instant case, hurt is caused with the help of heated water and, therefore, the act would be covered by Section 324 of I.P.C. We may refer to decision in case of **MAHINDAR SINGH vs. EMPEROR [AIR 1925 Lahore 297(1)]** where, in similar set of circumstances, conviction under Section 326 was altered to one under Section 324 of I.P.C. The appellant, therefore, can be convicted under Section 324 of I.P.C. and not Section 302 of I.P.C., as has been done by the Trial Court. The act would not come within the meaning of murder envisaged under Section 300 of I.P.C. We are, therefore, of the view that the appeal deserves to be allowed by altering conviction from one under Section 302 of I.P.C. to one under Section 324 of I.P.C.

13. Accordingly, the appeal is partly allowed. The conviction of the appellant is altered from one under Section 302 of I.P.C. to one under Section 324 of I.P.C. The punishment awardable under Section 324

of I.P.C. is for a term which may extend to three years, or with fine or with both. We find from the jail report that the appellant has undergone an imprisonment for more than 9 years. We are of the view that in this set of circumstances, the fine part of the sentence imposed by the Trial Court deserves to be set aside and is accordingly set aside. We, therefore, direct that the appellant be set at liberty forthwith, if not required in any other case. Fine, if paid by him, be refunded to him.

(A.L. Dave, J.)

(Bankim N. Mehta, J.)

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